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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

CARLTON S. DARGUSCH,
Petitioner,

vs.

COLUMBUS BAR ASSOCIATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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STATEMENT OF THE CASE AND ARGUMENT

The sole "Question Presented" in the Petition for a Writ of Certiorari is stated on page 2 of the Petition, as follows:

> "Whether in state disbarment proceedings denial of confrontation by suppression of the identity of the informant and accuser is consistent with the due process of law guaranty of the Fourteenth Amendment to the United States Constitution."

The "Question Presented" is wholly spurious since there was no "informant-accuser" of the petitioner as stated on page 4 of the Petition and, thus, there neither was nor could have been any suppression or denial of confrontation. The respondent and his counsel know that neither The Colum-

bus Bar Association nor any other person or body "repeatedly withheld" any information from them, much less the identity of any "informant-accuser". If there was an "accuser" in the sense indicated by the "Question Presented", it was The Columbus Bar Association who did and still does confront the petitioner with charges of unethical conduct. All of this is absolutely clear from the record.

These disciplinary proceedings were commenced by the filing of a complaint by The Columbus Bar Association with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with Rule XXVII (Now Rule XVIII, being the same as former Rule XXVII as amended March 11, 1964), paragraph 8, of the Rules of the Supreme Court of Ohio. (A copy of Rule XVIII of the Supreme Court of Ohio is attached hereto as Appendix A.)

Prior to the filing of the complaint, The Columbus Bar Association followed its procedure established to comply with paragraph 8 of said Rule XVIII. This procedure requires that the Columbus Bar Association's Committee on Professional Ethics make a thorough investigation of the professional conduct of any lawyer whose questionable conduct has come to the attention of that committee. If that committee determines after such investigation that the lawyer thus investigated has been guilty of unethical conduct, it makes its recommendations for the filing of a complaint to the Board of Governors of the Columbus Bar Association. The Board of Governors thoroughly reviews the findings of the Committee on Professional Ethics and if it approves the recommendations, a complaint is then filed with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with said Rule XVIII.

A lawyer's professional conduct may be brought to the attention of the Columbus Bar Association's Committee on Professional Ethics in several ways: (1) by direct complaint of an alleged injured party, (2) by reference from a fellow lawyer, (3) by such general knowledge in the community as to arouse the interest of the organized bar or (4) by referral from the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with paragraph 3 of said Rule XVIII.

In the instant case, during the summer of 1962, the then chairman of the Board of Commissioners on Grievances of the Supreme Court of Ohio, Mr. George A. Schwer, of Springfield, Ohio, directed Mr. John McMillan, the then Administrative Assistant of the Supreme Court of Ohio, to inquire whether the Columbus Bar Association had ever investigated the activities of Mr. Carlton S. Dargusch in connection with The Sunday Creek Coal Company. Mr. McMillan referred the matter to The Columbus Bar Association.

The Columbus Bar Association employs Mr. James C. Justice, an attorney, to make preliminary investigations of all disciplinary matters coming to the attention of the Association. Mr. Justice made such a routine investigation of Mr. Dargusch's activities. He reported his preliminary findings to the Committee on Professional Ethics in September, 1962. The Committee, considering that a more detailed investigation was indicated, appointed Mr. Sol Morton Isaac and Mr. G. Jack Crites, two of its members, and Mr. Justice as the investigating sub-committee. This sub-committee conducted intensive investigations over a period of six to eight months. Following a detailed report of that sub-committee, the Committee on Professional Ethics recommended to the Board of Governors of the

Association that a complaint be filed against Mr. Dargusch for unethical conduct. The Board of Governors considered the recommendations over a period of several months and then approved it. Mr. Isaac, Mr. Justice and Mr. John L. Davies, Jr., were appointed as a committee to prepare the complaint and to represent the Association in the hearing on the complaint. The complaint was prepared, was specifically approved by the Board of Governors and was duly filed.

After a complaint is filed with the Board of Commissioners on Grievances and Discipline, the chairman of that Board is obliged to appoint a panel of three members of that Board, none of whom reside in the respondent's county of residence, to hear the matter. In this instance the chairman appointed Mr. Glenn W. Vogelgesang, chairman of the panel, of Canton, Ohio; Mr. Aronhold C. Schapiro of Portsmouth, Ohio and Mr. Karl H. Weaner, of Defiance, Ohio; and the matter was duly assigned for hearing in December, 1963.

The respondent, Mr. Dargusch, was represented before, during and after the hearing by Mr. Richard C. Addison, Mr. John J. Chester, Jr., and Mr. Carlton S. Dargusch, Jr., all practicing attorneys in Columbus, Ohio. The entire record of the hearing consists of 672 pages and there were 101 exhibits.

The first reference to an accuser, if any, of Mr. Dargusch arose during the hearing in a question put to a witness by Mr. Weaner, one of the panel members. The witness, Mrs. Sexton, vigorously denied that she had accused Mr. Dargusch of anything to anyone. The entire discussion begins on page 265 of the Record and continues to page 283, when Mr. Isaac, on behalf of the Columbus Bar Association made a professional statement as to how the matter had

come to the attention of the Association, beginning on page 282 of the Record, as follows:

"MR. ISAAC: If the panel please, last evening before we adjourned, the panel asked Mrs. Sexton about how this matter arose, whether she was involved in bringing this matter to the Columbus Bar Association. I then made a statement which was not complete, and I believe that for the purpose of the record, if the panel will permit me, I should tell the panel how this matter came to the Columbus Bar Association, so that there is no inconsistency in the record and it is clear.

"I said that the Columbus Bar Association got information on this in about August of 1962. Actually, it was reported to the Professional Ethics Committee of the Columbus Bar Association, I think, in September at its meeting after the summer recess.

"Mr. Justice, who is the employee of the Columbus Bar Association charged with the investigation of unethical matters, reported to the Committee that he had received a call from John McMillen who was then the Administrative assistant in the Supreme Court and Secretary of this Commitee on grievances, to the effect that Mr. McMillen had received a letter from Mr. Schwer, I don't know his [first] name, but he is a lawyer in Springfield, Ohio, and Chairman of the Committee on Grievances. Mr. Schwer had asked whether the Columbus Bar Association had ever had brought to its attention some matters involving Mr. Dargusch and a coal company, and several women who were connected with the coal company, and as we understand it, the letter also said that Mr. Schwer believed that Mr. William Sommer (sic) had represented one or the other of these women in the coal company and would know the facts before them.

"As he is charged to do, Mr. Justice made a preliminary investigation, finding out that at that time, there was pending in the Common Pleas Court of Franklin County one or two cases involving these stock purchase agreements which had been made by the Sunday Creek Coal Company with some of the stockholders, and then in September, he reported to the Committee on Pro-

fessional Ethics his preliminary findings, and it was the opinion of the Professional Ethics Commitee that a subcommittee be appointed to investigate the matter further, and Mr. Crites and Mr. Justice and I were appointed to that subcommittee. We began our investigation, and I think possibly the first matter we took up then, was the conference we had with Mr. Dargusch and Mr. Saxbe which is shown in an exhibit.''

The Record is clear that during all of this conversation between members of the panel, the witness and the attorneys for the Bar Association, Mr. Dargusch and his counsel remained silent. They made no demand and raised no issue.

The next references in the Record of the hearing to an accuser of Mr. Dargusch are the statements made by Mr. Addison, counsel for Mr. Dargusch, and Chairman Vogelgesang which are quoted on pages 12 and 13 of the Petition for a Writ of Certiorari herein. The references are complete. There were no further statements made at the hearing. If counsel for Mr. Dargusch followed the suggestion of Mr. Vogelgesang to request further information from the Board of Grievances and Discipline, they did not report back to the panel or to counsel for The Columbus Bar Association.

The respective parties to the hearing filed briefs with the hearing panel. In the brief on behalf of Mr. Dargusch, at page 75, appears the only reference to an accusation, as follows:

> ''*We would agree that the relator, Columbus Bar Association, has the right to question the conduct of the Respondent, as a matter of procedure, over the protest of all those directly affected by the alleged unethical conduct, and despite the fact that those affected did not consider the conduct to involve any conflict of interest so far as they were concerned.* But in such a

> circumstance they must produce facts and witnesses to support their case." (Emphasis added)

It is submitted that this statement by counsel for Mr. Dargusch is an accurate description of the situation in this case and a complete answer to the "Question Presented" by the Petition for a Writ of Certiorari.

In accordance with the rules of the Supreme Court of Ohio, the hearing panel made its findings of fact and conclusions of law, finding Mr. Dargusch guilty of unethical conduct. These findings were reviewed and approved by the Board of Commissioners on Grievances and Discipline and referred to the Supreme Court of Ohio with a recommendation that there be a public reprimand of Mr. Dargusch. *The issue of confrontation of an accuser is not mentioned in the findings of fact and conclusions of law of the hearing panel because Mr. Dargusch agreed that there was no such issue.*

The Ohio Supreme Court issued an order to show cause why the findings of fact of the Board of Commissioners on Grievances and Discipline should not be adopted as findings by the Court, and if they were, whether Mr. Dargusch should be given a public reprimand, suspended for an indefinite period from the practice of law or permanently disbarred. In his response to that order Mr. Dargusch for the first time formally raised this issue of accusation. He said, on page 1:

> "In 1962 a complaint was filed against Respondent. To this day the Columbus Bar Association has not disclosed the complainant's name and thus Respondent has been denied the chance to subject his accuser to cross-examination. To say the least due process requires this."

On page 24 of his response, Mr. Dargusch summarized, as follows:

> "(1) The beneficiaries of the trust involved state they have no complaint. The complaint was filed by a person whose identity the Columbus Bar Association refuses to disclose and therefore Respondent has been denied his constitutional right to cross-examine his accuser."

This is a patently false and misleading statement, contradictory to the other statement made on behalf of Mr. Dargusch and quoted above. The Record refutes completely these conclusions. They have no foundation in fact.

Once again, counsel for the Columbus Bar Association make their professional statement to this Court, as they did to the hearing panel and to the Supreme Court of Ohio. *There was no "accuser" of Mr. Dargusch to the Columbus Bar Association.* There was an inquiry by Mr. Schwer, chairman of the Board of Commissioners on Grievances and Discipline. There was no refusal to reveal or denial of confrontation of an accuser because there was no accuser.

Mr. Dargusch was found guilty of unethical conduct by the committee on Professional Ethics of the Columbus Bar Association, by the Board of Governors of the Columbus Bar Association, by the hearing panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, by the entire Board and by the Supreme Court of Ohio, who saw fit to increase the recommended penalty from a public reprimand to an indefinite suspension of the right to practice law. This decision was made because Mr. Dargusch was found to have committed acts which violated the canons of ethics of the American Bar Association, as approved and adopted by the Supreme Court of Ohio. His accuser was the Columbus Bar Association whom he

faced in a full and exhaustive hearing, both before the panel and the Supreme Court of Ohio.

There is no reason to analyze the law presented by the petitioner in support of his Petition for a Writ of Certiorari. The sole "Question Presented" is not an issue under the indisputable facts of this case.

The Columbus Bar Association respectfully submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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JAMES C. JUSTICE,
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Attorneys for Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two (2) copies of the foregoing brief have been mailed by air mail with postage pre-paid to attorneys for Petitioner, Joseph L. Rauh, Jr., and John Sillard, respectively at their offices located at 1625 K Street, NW, Washington 6, D.C.

The undersigned further certifies that two (2) copies of the foregoing brief were mailed to Carlton S. Dargusch, Jr., Of Counsel for Petitioner, at his office at 218 East State Street, Columbus, Ohio.

Sol Morton Isaac

SOL MORTON ISAAC,
Of Counsel for Respondent.

APPENDIX

RULE XVIII.[2]

DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

(1) **Creation of Board of Commissioners on Grievances and Discipline.** There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed from each of the following districts: *District 1,* comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. *District 2,* comprising Darke, Miami, Montgomery, Preble and Shelby Counties. *District 3,* comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. *District 4,* comprising Lucas County. *District 5,* comprising Crawford, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. *District 6,* comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. *District 7,* comprising Delaware, Franklin and Pickaway Counties. *District 8,* comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pike, Ross, Scioto and Vinton Counties. *District 9,* comprising Coshocton, Fairfield, Knox, Licking, Musking-

[2]Same as former Rule XXVII as amended March 11, 1964.

um and Perry Counties. *District 10,* comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. *District 11,* comprising Portage and Summit Counties. *District 12,* comprising Cuyahoga County. *District 13,* comprising Ashtabula, Columbiana, Geauga, Lake, Mahoning and Trumbull Counties. *District 14,* comprising Carroll, Stark and Tuscarawas Counties. *District 15,* comprising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. *District 16,* comprising Allen, Auglaize, Hardin and Mercer Counties. *District 17,* comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment. Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Commissioners and of panels thereof.

(2) **Jurisdiction of Board.** The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided.

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law or judge, or

(b) Concerning the mental illness of any attorney and counselor of law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State.

(3) **Referral for Investigation.** The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association any matters coming to its attenction for investigation, as hereinafter provided.

(4) Application of Rule; Authority and Duty of Local Committees. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges, all proceedings for the discipline of such attorneys and counselors at law and judges and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule, and any committee of any regularly organized bar association or of the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Pro-

fessional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

(5) **Definitions.**

(a) **Misconduct.** Misconduct shall mean any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, or the commission or conviction of a crime involving moral turpitude.

(b) **Mental Illness.** Mental illness shall mean the condition defined in Section 5122.01 (A), Revised Code.

(6) **Manner of Discipline.** Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

(7) **Effect of Discipline.** A person disbarred shall never thereafter be readmitted to the practice of law in this State. A person who shall have voluntarily surrendered his license

to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) **The Complaint; Where Filed; By Whom Signed.** A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary, or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall Constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by the order of the Supreme

Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

(9) **Duty of the Board Upon Filing of the Complaint.**

(a) **Notice to Respondent.** The Secretary of the Board of Commissioners shall send a copy of the complaint by registered mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint.

(b) **Suspension of Right to Practice Pending Disposition of Misconduct Complaint.** After an answer has been filed or the time for answer has elapsed, the Court shall entertain such recommendation as the Board may make for the immediate suspension from the practice of law pending disposition of the complaint if the complaint alleges the conviction of a crime involving moral turpitude supported by a certified copy of the judgment entry of the Court convicting the Respondent.

(c) **Mental Illness Suspension.** After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination as provided in (d) hereof, the Board shall forthwith certify the complaint to this Court and the Court may suspend the Respondent from the practice of law.

(d) **Examination.** If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own

motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(e) **Termination.** Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for suspension, which is certified by the Board to, and affirmed by, the Court.

(10) **Hearing by Panel of Three Commissioners.** After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(11) **Dismissal of Complaint.** If the panel finds that the complaint or evidence is insufficient, the panel shall make its certified report of the proceedings and recommendations to the Board of Commissioners which shall review the proceedings, and shall dismiss the complaint, or refer the matter back to the panel for further hearing or the administering of a private reprimand, or may proceed upon the

certified report of the proceedings before the panel. The Secretary of the Board of Commissioners shall give notice of a dismissal to the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county or counties in which the Respondent resides and maintains his office, and of the county or counties from which the complaint arose.

If a written request for a conference with the Supreme Court of Ohio is made by the relator within twenty (20) days after the issuance of such notice, relator, respondent and a member of the hearing panel will be called to confer with the Court.

(12) **Private Reprimand; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by such panel.

If a written request for a conference with the Supreme Court of Ohio is made by the relator within twenty (20) days after the issuance of such notice, relator, respondent and a member of the hearing panel will be called to confer with the Court.

(13) **Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same;

together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) **Review by Entire Board of Commissioners; Board to Administer Private Reprimand.** Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(15) **Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review.** If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and

shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) **Show Cause Order Issued by the Court to Respondent.** On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

(17) **Response to Order to Show Cause and Objections.** The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(18) **Answer Briefs.** Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) **Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order.** After hearing

on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar association or associations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio; the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

(20) **Proceedings Private; Exceptions.** All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) Where the respondent shall request in writing that they be public, or

(b) Where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or

(c) Where any disciplinary matter is heard by the Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

(21) **Petition for Reinstatement.** No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed with this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State, or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(22) **Contents of Petition for Reinstatement.** Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when indefinite suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates of all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under the Rule, to receive from the Clerk of Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

(23) **Costs to Be Deposited with Petition for Reinstatement.** Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(24) **Requisites for Reinstatement.** No person shall be reinstated unless he has established by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such case the order of reinstatement may

be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule XVII shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

(25) **Petition for Reinstatement Referred to Board of Commissioners.** Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(26) **Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court from Denial of Petition by Board of Commissioners.** The Chairman of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (22) (c). Such hearing shall be public. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (22) (c) shall have ten (10) days from the receipt of notice of filing of such report to file objections to the recommendations and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

(27) **Manner of Service of Notices, etc.** Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

(28) **Quorum of Panel or Board.** A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(29) **Clerk Is Agent for Service of Notices on Nonresident Attorney.** Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this Rule.

(30) **Manner of Service on Clerk; Record of Such Service not a Public Record.** All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service upon said Clerk of this Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any

proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(31) **Power to Issue Subpoenas.** In investigations and proceedings under this rule, upon application by the Chairman, Vice Chairman, Secretary, or Counsel of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a certificate under Section (8) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or any sub-committee thereof, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(32) **May Order Depositions.** The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil

actions, and such depositions may be used to the same extent as permitted in civil actions.

(33) **Effect of Refusal to Testify.** The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

(34) **Rules of Evidence.** All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

(35) **Docket of Complaints.** The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(36) **Board May Prescribe Rules.** The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(37) **Rules to Be Liberally Construed.** The process and procedure under this Rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulations relating to investigations and proceedings involving com-

plaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this Rule. To the extent that application of this amended Rule to such pending proceedings may not be practicable, the rules and regulations in force at the time of this amended Rule became effective, shall continue to apply.